

**ADDENDUM TO SYSTEM PROTECTION MAINTENANCE AGREEMENT WITH  
IMPROVE GROUP  
REGARDING MEGASTAR MEDIA STATION MAINTENANCE**

**THIS ADDENDUM TO THE SYSTEM PROTECTION AGREEMENT** is made and entered into this 29 day of July, 2009 by and between the County of Santa Fe, hereinafter referred to as the "County", and Improve Group, whose principal address is 3550 Pan American Freeway NE Suite A, Albuquerque, New Mexico, 87107, hereinafter referred to as the "Contractor".

**WHEREAS**, pursuant to NMSA 1978, Section 13-1-125, Small Purchase, the County wishes to contract with the Contractor for Maintenance Services of the Megastar Media Station; and

**WHEREAS**, Contractor has certified technicians who are approved to conduct maintenance on the subject manufacturer's equipment so as to be in compliance with warranty provisions of said equipment; and

**WHEREAS**, Contractor has proposed a System Protection Agreement which is acceptable in part but requires the removal of certain terms and the addition of certain terms so as to meet state and county procurement regulations; and

**WHEREAS**, both parties desire to enter into the System Protection Agreement with said modified and additional items.

**NOW THEREFORE**, it is mutually agreed between the parties that the following provisions shall be incorporated into the Maintenance Agreement as if fully set forth therein:

**1. TERM**

The renewal provision set forth in paragraph 9 of the System Protection Agreement may be used for no more than three successive one year periods, allowing this System Protection Agreement to continue in full force and effect for a period of no more than four years. There shall be no pre-payment of services. Services shall be paid in accordance with paragraph 2 below during the initial term of the contract and each year of renewal.

**2. SCOPE OF WORK**

Attachment A, which is attached hereto and consists of two pages entitled "System Protection Agreement Platinum Quote" is hereby adopted and incorporated by reference and sets forth those services which the Contractor shall provide to the County.

**3. COMPENSATION, INVOICING AND SET-OFF**

A. The annual fee for said maintenance services shall be \$1964.36. Rather than adopting the payment terms set forth in the System Protection Agreement, Contractor shall submit a written request for payment to County at the conclusion of each month of service. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that County may not make any payment hereunder

unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, County shall tender payment for the accepted items or services. In the event County fails to tender payment within thirty (30) days of the written certification accepting the items or services, County shall pay late payment charges of one and one -half(1.5%) per month, until the amount due is paid in full.

B. In the event Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as County determines the exact amount of damages it suffered as a result of the breach.

C. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payment.

#### **4. TERMINATION**

A. In addition to Contractor's termination rights as set forth herein, the County may terminate the Agreement based upon any material breach of this Agreement by the Contractor. The County shall give Contractor written notice of termination specifying the grounds for the termination. The termination shall be effective seven (7) calendar days from mailing of a certified letter to Contractor notifying Contractor of the termination, during which time Contractor shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within seven said (7) days, Contractor shall have a reasonable time to cure the breach, provided that, within seven (7) calendar days of its receipt of the written notice of termination, Contractor (i) began to cure the breach and (ii) advised the County in writing of its intent to cure.

B. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Contractor, and the County may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the County from the Contractor is determined.

C. County may, in its discretion, terminate this Agreement at any time for any reason by giving Contractor written notice of termination. The notice shall specify the effective date of termination, which shall be not less than seven (7) calendar days from the date of mailing a certified notice of termination to Contractor. County shall pay Contractor for acceptable work, determined in accordance with the specification and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

#### **5. INDEPENDENT CONTRACTOR**

The Contractor, its agents and employees are independent contractors performing services for the County, and are not employees or agents of the County. Notwithstanding that the Contractor enters into and performs under this Agreement, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

**6. PERSONNEL**

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor have any contractual relationships with County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state and local law to perform such work.

**7. ASSIGNMENT**

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County. Any attempted assignment or transfer without County's advance written approval shall be null and void and without any legal effect.

**8. SUBCONTRACTING**

Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the prior written approval of County. Any attempted subcontracting or delegating without County's advance written approval shall be null and void and without any legal effect.

**9. INDEMNITY**

- A. Contractor shall defend, indemnify, and hold harmless County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of Contractor's performance of non-performance of its obligation under this Agreement, including but not limited to Contractor's breach of any representation or warranty made herein.
- B. The Contractor agrees (i) that County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to County and (ii) that such suit will not be settled without County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of County and Contractor in such demand, suit, or cause of action, counsel shall be retained to represent the County's interest.
- C. Contractor's obligations under this section shall not be limited by the provisions of any insurance policy Contractor is required to maintain under this Agreement.

**10. RECORDS AND INSPECTIONS**

- A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principals ("GAAP").

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

## **11. APPROPRIATIONS AND AUTHORIZATION**

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by County to Contractor. Such termination shall be without penalty to County, and County shall have no duty to reimburse Contractor for expenditures made in the performance of this Agreement. County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by County. County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by Contractor in any way or forum, including a lawsuit.

## **12. INSURANCE**

A. General Conditions: The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance Including Automobile: The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death and property damage for anyone occurrence. Said policies of insurance shall include coverage for all operations performed for the County of Santa Fe by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work and contractual liability coverage under which this Agreement is an insured contract. County of Santa Fe shall be a named additional insured on the policy.

C. Worker's Compensation Insurance: The Contractor shall comply with the provisions of the Worker's Compensation Act.

D. Increased Limits: If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-27, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

## **13. PERMITS AND LICENSES**

The Contractor shall procure all permits and licenses, pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the work.

**14. RELEASE**

The Contractor, upon final payment of the amount due under this Agreement, releases the County, its officers, agents and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the County to any obligation not agreed to herein unless the Contractor has express written authority from the County to do so, and then only within the strict limitations of that authority.

**15. PUBLICATION, REPRODUCTION AND USE OF MATERIAL**

The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other material prepared under this Agreement. Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, County shall own any such copyright.

**16. CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

**17. AMENDMENT**

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto. Contractor specifically acknowledges and agrees that County shall not be responsible for any changes to "Scope of Work", of this Agreement unless such changes are set forth in a duly executed written amendment of this Agreement.

**18. INTEGRATION**

This Addendum to System Protection Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Addendum to Maintenance Agreement.

**19. EQUAL OPPORTUNITY COMPLIANCE**

A. Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

**20. SEVERABILITY**

If any term or condition of this Agreement shall be held invalid or non-enforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

**21. APPLICABLE LAW**

In providing the SCOPE OF WORK as outlined in the System Protection Agreement and herein, the Contractor shall comply with all applicable Federal, State of New Mexico and local governments' laws and ordinances. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Venue shall be in Santa Fe County.

**22. NOTICE OF PENALTIES**

The Procurement Code, Section 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

**23. NO THIRD-PARTY BENEFICIARIES**

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

**24. SIGNATURES**

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes. The parties further agree that execution of the System Protection Agreement and this Addendum shall be accomplished by placing signatures on the Addendum rather than the System Protection Agreement.

**25. LIMITATION OF LIABILITY**

County's liability to Contractor for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in the section on compensation above. In no event shall County be liable to Contractor for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into this Agreement.

**26. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

**27. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

Contractor hereby represents and warrants that:

A. It is a corporation duly organized and in good standing under the laws of the state of New Mexico.

B. This Agreement has been duly authorized by Contractor, the person executing this Agreement has authority to do so, and, once executed by Contractor, this Agreement shall constitute a binding obligation of Contractor.

C. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's articles of incorporation or by-laws or any corporate resolution adopted by Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement this as of the date first written above.

**SANTA FE COUNTY**

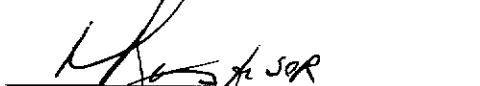


Roman Abeyta  
Santa Fe County Manager




7/27/09  
Date

**APPROVED AS TO LEGAL FORM:**

  
Stephen C. Ross  
Santa Fe County Attorney

7-24-09  
Date

**FINANCE DEPARTMENT APPROVAL:**

  
Teresa Martinez  
Santa Fe County Finance Director

**IMPROVE GROUP:**

  
Signature

Georgia Romero Service Admin  
Print name and title

7/29/09  
Date

**FEDERAL TAX IDENTIFICATION NUMBER:** 84-0715545



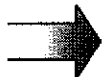
SYSTEM PROTECTION AGREEMENT  
PLATINUM  
QUOTE

3550 Pan American Fwy NE : Suite A : Albuquerque, NM 87107  
Free: 800.244.1452 : Main: 505.265.8709 : Fax: 505.256.1240  
Colorado : New Mexico : Texas : Wyoming

Theresa Montez  
Santa Fe County  
102 Grant St. P.O. Box 1985  
County Clerk  
Santa Fe, NM 87504

June 23, 2009

Agreement #: 1306



**Contract Period:** *From:* 7/1/09

*To:* 6/30/10

**Agreement Provisions**

- Replacements of all parts due to normal wear.
- Unlimited service calls.
- Unlimited labor by factory trained technicians.
- Inspection performed twice a year. (Lubrication, calibration, replacement of worn parts, cleaning and adjustment of system)
- Lifetime training on the operation of the system.
- Four (4) hour response time within a 60-mile radius of Albuquerque, Denver, El Paso and Lubbock.
- Full-time answer desk for any questions you may have regarding your service agreement.
- Replacement parts stocked for emergencies.
- Travel time and mileage.

**Price**

MediaStation	\$1,838.00
Subtotal	\$1,838.00
Tax on Labor	\$126.36
Total	\$1,964.36

**Customer Acceptance**

Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Department: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_



Improve Group has earned  
the Spacesaver Award for  
Excellence in Customer Service



(Signature)

Roman Abeyta, County Manager

Approved as to form  
Santa Fe County Attorney

By: \_\_\_\_\_  
Date: 7-29-09

1 of 2





## SYSTEM PROTECTION AGREEMENT PLATINUM QUOTE

3550 Pan American Fwy NE : Suite A : Albuquerque, NM 87107  
Free: 800.244.1452 : Main: 505.265.8709 : Fax: 505.256.1240  
Colorado : New Mexico : Texas : Wyoming

### Method of Payment & Billing Cycle

(Master Card or Visa Accepted)

Pay by:	<input type="checkbox"/> Check	_____
	<input type="checkbox"/> PO#	_____
	<input type="checkbox"/> CC#	_____
	Expires	_____
	Card Holder	_____
	CVV2/CID	_____
Bill:	<input type="checkbox"/> In full	
	<input type="checkbox"/> Semi-annually	
When:	<input type="checkbox"/> At the beginning	
	<input type="checkbox"/> At the end	

Decline: ☐

If not interested, please fax back to:  
505-256-1240, Attn: Georgia Romero

### Proposed by

(Signature) Georgia Romero  
Improve Group

### Terms and Conditions

**Mechanical Service** will be furnished to the customer by Improve Group for the equipment listed during the established business hours of Improve Group, Monday through Friday, excluding holidays. All prices quoted herein for systems or equipment to be placed under Agreement are based on the understanding that all equipment will be used

during a standard 40 hour work week of one shift, excluding Saturday, Sunday and holidays. Where equipment is used on a two or three shift basis, the regular pricing of the Agreement is to be increased 25% or 50% respectively to cover usage only. Inspections and service calls will be made during a standard 40 hour work week of one shift, excluding Saturday, Sunday and holidays.

**Maintenance service and parts replacement do not cover repairs or parts required because of an accident, fire, water abuse or misuse, or cover changes in setup.**

The customer authorizes Mechanical Service be rendered by Improve Group for the specified equipment and contract period noted in this agreement. Customer will receive renewal notice two (2) months prior to agreement expiration date. Agreement may be terminated with a written notice no less than thirty (30) days prior to agreement expiration date. Improve Group reserves the right to examine equipment prior to any renewal of this Agreement; and in the event the machine(s) requires overhauling or re-building, an estimate will be submitted for customer's approval before the work is started.

IN NO EVENT shall Improve Group be liable for any special, indirect, consequential or exemplary damages including, without limitations, loss of anticipated profits or business opportunities, or for specific performance. Improve Group shall not be responsible for failure to render service for any caused beyond its control including, without limitation, strikes, and labor disputes.

~~This Agreement shall constitute the entire contract between the parties and cannot be modified except in writing signed by both parties.~~ See Addendum